STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	)	
and	)	
The Peoples Gas Light & Coke Company	)	
	)	Docket No. 10-0564
	)	
Petition Pursuant to Section 8-104	)	
of the Public Utilities Act for Approval of an	)	
Energy Efficiency Plan	)	

INTIAL BRIEF

OF THE PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN, Attorney General

Karen L. Lusson
Senior Assistant Attorney General
Public Utilities Bureau
Office of the Attorney General
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Telephone: (312) 814-1136
Fax: (312) 814-3212

Dated: January 5, 2011

TABLE OF CONTENTS

The People of the State of Illinois ("the People"), by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Part 200.800 of the Illinois Commerce Commission's ("the Commission") rules, 83 Ill.Admin.Code Part 200.800, hereby file their Initial Brief in the above-captioned proceeding.

I. Introduction

The Public Utilities Act ("PUA" or "the Act") requires all natural gas utilities to reduce the "direct and indirect costs to consumers" through the provision of cost-effective energy efficiency measures. 220 ILCS 5/8-104(a). The law requires these utilities to comply, as a minimum, with the following natural gas savings requirements, which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of Section 8-104:

> 0.2 percent by May 30, 2012;
> an additional 0.4% by May 31, 2013, increasing total savings to 0.6%;
> an additional 0.6% by May 31, 2014, increasing total savings to 1.2%;
> an additional 0.8% by May 31, 2015, increasing total savings to 2.0%;
> an additional 1% by May 31, 2016, increasing total savings to 3.0%;
> an additional 1.2% by May 31, 2017, increasing total savings to 4.2%;
> an additional 1.4% by May 31, 2018, increasing total savings to 5.6%;
> an additional 1.5% by May 31, 2019, increasing total savings to 7.1%;
> and an additional 1.5% in each 12-month period thereafter.

220 ILCS 5/8-104(c).

Under Section 8-104 of the Act, 25% of the funds collected from the utilities' retail ratepayers shall be used by the Department of Commerce and Economic Opportunity ("DCEO"), to implement energy efficiency measures for local government, municipal corporations, school districts and community college districts. 220 ILCS 5/8-104(e). In addition, the utility shall coordinate with DCEO "to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level." 220 ILCS 5/8-104(f)(4).

On September 29, 2010, Peoples Gas Light & Coke Company and North Shore Gas Company ("PGL/NS" or "the Companies") submitted their proposed three-year plan describing energy efficiency programs, savings goals and spending amounts that the Companies propose to implement to meet these standards. PGL/NS Exhibit 1.0, 1.2 (PGL/NS Energy Efficiency Program Plan, ["the Plan"]). DCEO also submitted its three-year plan for DCEO-administered programs designed to meet approximately 20 percent of the Companies' gas energy efficiency savings requirements. DCEO Ex. 1.0 through 1.6. The DCEO plan includes programs that target units of local government, municipal corporations, school districts and community college districts, which must account for 20% of the annual gas energy savings goals. 220 ILCS 5/8-104(e). DCEO Ex. 1.0 at 17-18.

The Plan submitted by PGL/NS is the Companies' first foray into running an energy efficiency program. While the Companies now offer the Chicagoland Natural Gas Savings Program, which was approved by the Commission in ICC Docket No. 07-0241, 07-0242, it is overseen by a five-member Governance Board comprised of the Attorney General's Office, the Environmental Law and Policy Center, the Citizens Utiliy Board, the City of Chicago and the Companies, with each party having one vote. The Commission Staff also participates in the Governance Board process as a non-voting member. A Contract Administrator selected by the Governance Board oversees the Chicagoland Program and presents program implementation ideas to the Governance Board for approval. In sum, the Companies lack experience in developing or running's debut filing pursuant to the requirements of Section 8-104 of the Act. This lack of in-house experience is highlighted by the Companies' decision to hire Franklin Energy Services to provide "turnkey energy efficiency implementation services for North Shore Gas and

Peoples Gas." Ex. 1.2 at 26. As such, it is imperative that the Commission enter an order in this docket that ensures that the programs being funded by ratepayers through Rider EOA are cost-effective, recognizing the Company's lack of experience in providing these programs.

The Companies' proposed plan falls short of the specific statutory requirements regarding the energy savings goals to be achieved and the amount that should be spent to maximize cost-effective energy savings for its customers. In addition, the Plan's proposal to deem for the full three-year period at issue the calculation of savings achieved, rather than through an annual adjustment process that considers all of the variables that affect that calculation, inappropriately insulates the Company from any risk, forcing the very ratepayers who fund the programs to assume all risk of non-cost-effective programs. In addition, the Companies are hesitant to embrace a true collaboration with the Stakeholder Advisory Group in the development of energy savings estimates, planning processes and evaluation criteria that has served the electric utility community so well in the past three years. As discussed below, the Commission should reject the Companies' proposed plan and order the Company to file a modified plan in accordance with the following recommendations:

1. The Companies have not calculated appropriate savings goals and rate cap spending limits consistent with the Act. Specifically the Companies' goals and spending limits should be roughly three times higher than they propose because they have incorrectly removed the vast majority of transportation gas volumes delivered to its customers in these calculations. The Commission should order the Companies to re-file their savings and spending estimates to properly reflect transportation customer gas volumes in the calculation of energy savings and spending amounts.

2. The Companies request full deeming of measure savings and Net-to-Gross ("NTG") ratios during the entire three-year plan. ICC policies with respect to deemed parameters such as NTG and gross measure savings should be consistent across utilities. As the AG recommended in the ComEd docket (ICC Docket 10-0570) and as adopted by the Commission, deemed parameters need to be reconsidered at least annually in collaboration with the

Stakeholder Advisory Group.[1] In addition, because the Companies are just beginning their first statutory EE plans, deeming of NTG ratios should not be done because there is no evidence the NTG ratios the Companies propose are based on their specific plans or any studies that would support them. Finally, deeming energy savings, as proposed by the Companies, unduly shifts the performance risk of the EEP from Companies to ratepayers, contrary to the intent of the Act.

3. The Companies (in collaboration with the other Illinois gas and electric utilities and the SAG) should establish and maintain a Technical Reference Manual that documents in a transparent way how energy savings are estimated, and supports on-going effective modification of these estimates.

4. While the People do not provide an exhaustive critique of the Companies' specific gas and electric program integration plans, concerns involving those plans are highlighted and should be resolved in the Companies' subsequent, revised filing.

5. The Companies' testify that they have already chosen an evaluation (Navigant Consulting) for the statutorily required evaluation of the Plan. On the electric side, the utilities have collaborated with the SAG to ensure fair, open and objective evaluations of the Companies' first three-year energy efficiency plans occur. Such collaboration is essential to ensuring cost-effectiveness of the Companies' proposed Plan. The Companies should be ordered to collaborate with the SAG regarding the bidding, selection and parameters of the evaluation.

---

[1] The Stakeholder Advisory Group ("SAG") was first established by the Commission in ICC Docket Nos. 07-0539 and 07-0540, Ameren and ComEd's petitions for approval of electric energy efficiency plans. The SAG consists of various stakeholders, including Commonwealth Edison Company and the Ameren Illinois Utilities, who have met since 2008 to work with the utilities to reach consensus on issues such as program design and evaluation metrics. In its Orders in ICC Docket Nos. 07-0539 and 07-0540, the Commission stated:

> All parties involved, with the possible exception of Staff, maintain that a Stakeholder Advisory Committee is essential to the success of the Plan. This Commission agrees with ComEd that it should establish a stakeholder process to review ComEd's progress towards achieving the required energy efficiency and demand response goals and to continue strengthening the portfolio. The Stakeholder group's responsibilities include, but are not limited to: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and against statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs where the change is more than 20%.

ICC Docket No. 07-0539, Order of February 6, 2008 at 24; ICC Docket No. 07-0540, Order of February 6, 2008 at 32. Within the past year, both Nicor Gas Company and Peoples Gas and North Shore Gas representatives have attended various SAG meetings.

6. The Companies propose an inappropriate per-customer cost recovery mechanism that is not in the broad interests of ratepayers, results in inequitable treatment of low-therm usage ratepayers, does not align cost contributions with the potential to benefit from the EEP portfolio, lessens customer incentives for energy efficiency, and is inconsistent with traditional regulatory treatment of demand-side management cost recovery. The Companies should be ordered to revise Rider EOA so that cost-recovery for the efficiency programs is collected on a per-therm, rather than a per-customer, basis.

7. DCEO has requested that the Companies make available sufficient funds in the early years of the plan to adequately meet the agency's projected energy efficiency program participation levels. The People support that request.

These and other issues are discussed below. The People urge the Commission to enter an order consistent with these recommendations discussed below, based on the requirements of Section 8-104 of the Act and the record evidence in this docket.

II. The Companies' Energy Efficiency Plan

D. Calculation of Natural Gas Savings Goals

As noted above, Section 8-104 of the Act sets out annual goals as a percent of gas consumption by year, as well as a spending cap of 2.0% of revenue each year.[2] Specifically, regarding savings goals, the Act states:

> Natural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, which shall be based on the *total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section,* during calendar year 2009 multiplied by the applicable percentage.

220 ILCS 5/8-104(c) (emphasis added).

Section (m) goes on to exclude certain categories of customers. These include customers using gas for feedstock and some very large industrial customers falling into specific industrial classifications that have the option of applying for a self directed program:

[2] *See* 220 ILCS 5/8-104 (c), (d) and (m).

> Subsections (a) through (k) of this Section do not apply to customers of a natural gas utility that have a North American Industry Classification System code number that is 22111 or any such code number beginning with the digits 31, 31, or 33 *and* (i) annual usage in the aggregate of 4 million therms or more within the service territory of the affected gas utility or with aggregate usage of 8 million therms or more in this State *and* complying with the provisions of item (1) of this subsection (m).

220 ILCS 8-104(m) (emphasis added).

The statute refers to a "self-directing customer" (SDC) option that these large industrial customers can use in lieu of traditional program funding contributions and participation, which requires such customers to create an "energy efficiency reserve account" for the purpose of funding energy efficiency measures of the customer's choosing. 220 ILCS 5/8-104(m)(1)(B). Subsection (m)(1) requires that these customers have applied for the SDC option by February 2010. 220 ILCS 5/8-104(m)(1).

Both AG/CUB witness Phillip Mosenthal[3] and Staff witness Richard Zuraski testified that the Companies' estimates of therms savings goals wrongly excludes vastly more transportation deliveries to its customers than permitted under Section 8-104(m). Specifically, the Companies categorize all of their "transportation" deliveries to their customers as excluded except for those participating in the Customer Select Program (Rider 15) (roughly only a quarter of transportation deliveries). AG Ex. 1.0 at 6; Staff Ex. 2.0 at 3-6.

---

[3] Mr. Mosenthal has developed numerous utility efficiency plans, and designed and evaluated utility and non-utility residential, commercial and industrial energy efficiency programs throughout North America, Europe and China. I have also completed or directed numerous studies of efficiency potential and economics in many locations, including China, Colorado, Kansas, Maine, Massachusetts, Michigan, New England, New Jersey, New York, Quebec, Texas, and Vermont. These studies ranged from high level assessments to extremely detailed, bottom-up assessments evaluating thousands of measures among numerous market segments. Recent examples of the latter are analyses of electric and natural gas efficiency and renewable potential along with the development of suggested programs for New York State, on behalf of the New York State Energy Research and Development Authority (NYSERDA). He is currently a lead advisor for business energy services in Rhode Island and Massachusetts on behalf of the Energy Efficiency Resource Management Council and the Energy Efficiency Advisory Council, respectively, overseeing and advising on utility program administrator's plans, program designs, implementation and performance. Mr. Mosenthal has been actively engaged in the Illinois Stakeholder Advisory Group (SAG) since its inception, representing the People. Prior to co-founding Optimal Energy in 1996, he was the Chief Consultant for the Mid-Atlantic Region for XENERGY, INC. (now KEMA). His resume is attached to his Direct testimony as AG Exhibit 1.1.

The Companies assumed a very restrictive interpretation of the Act and are excluding vastly more transportation deliveries to their customers than permitted under the Act in calculating energy savings goals and rate impact caps. Specifically, the Companies categorize all of their transportation deliveries to their customers as excluded except for those participating in the Companies' "Choices For You" offering for small volume transportation customers.[4]

PGL/NS witness Edward Korenchan, in NS-PGL Ex. 2.5, shows the Companies' 2009 gas deliveries used as the basis for its goals calculations. This exhibit shows total 2009 deliveries applicable to energy efficiency reduction of 1.1 billion therms for Peoples Gas and 248.6million therms for North Shore. The Companies' gas deliveries, however, exclude therm sales to large volume transportation customers. Had the Companies included therm sales to these customer groups in their Ex. 2.5 calculations, the total 2009 therms delivered that would be subject to energy efficiency reductions would increase from 1.1 billion therms to 3.5 billion for Peoples Gas, and from 248.6 million therms to 695.9 million therms for North Shore. AG Ex. 1.0 at 8. Including all appropriate therm sales in the Companies' target savings goals, as required by sections 8-104(c), (m) and (e) of the Act, substantially increases therm savings, as shown in the tables below. Note that this correction reflects an upper bound adjustment to the Companies' calculations because it is likely a proportion of these excluded transportation customers' usage may qualify for exemption under Subsection (m). However, the calculation shows that a significant upward adjustment is necessary:

[4] PGL/NS Ex. 2.0 at. 16.

Peoples Gas					
Total Therm deliveries including ALL large volume transportation customers				3,507,336,492	
	Annual Incremental Goals Statutory	Cumulative Goals	Annual Incre Therm savings	Peoples Portion 80%	DCEO Portion 20%
PY 1	0.20%	0.20%	7,014,673	5,611,738	1,402,935
PY2	0.40%	0.60%	14,029,346	11,223,477	2,805,869
PY3	0.60%	1.20%	21,044,019	16,835,215	4,208,804
Total Therm Savings			42,088,038	33,670,430	8,417,608
Percent increase			308%		

AG Ex. 1.0 at 9.

For Peoples, cumulative savings would increase from 13.6 million therms to 42 million, inclusive of DCEO allocated savings, by the end of the plan period. This reflects more than a tripling of goals (308%):

North Shore Gas					
Total Therm deliveries including ALL large volume transportation custome				695,981,024	
	Annual Incremental Goals Statutory	Cumulative Goals	Annual Incre Therm savings	No Shore 80%	DCEO Portion 20%
PY 1	0.20%	0.20%	1,391,962	1,113,570	278,392
PY2	0.40%	0.60%	2,783,924	2,227,139	556,785
PY3	0.60%	1.20%	4,175,886	3,340,709	835,177
Total Therm Savings			8,351,772	6,681,418	1,670,354
Percent increase			280%		

AG Ex. 1.0 at 9.

For North Shore Gas, cumulative savings would increase from 2.9 million therms to 8.3 million, inclusive of DCEO allocated savings, by the end of the plan period -- just shy of a tripling of the Companies' proposed goals. *Id.*

The Companies exclusion of significant amounts of therm sales delivered to end use customers in their calculation of the statutory energy savings goals is based on PGL/NS witness Korenchan's interpretation of the legislative history of Section 8-104.[5] The history of the legislation, according to the Companies, excludes large volume customers on the assumption that such customers are engaged in wholesale transactions with Peoples Gas and North Shore Gas. Mr. Korenchan asserts that because Section 8-104(c) specifies "gas delivered to retail customers" as

[5] NG-PGL Ex. 2.0 at 15 – 16.

the base, and the legislative transcripts define large volume transportation as "wholesale," these volumes are excluded. NS-PGL Ex. 2.0 at 15.

The Commission should reject the Companies reading of the Act. Section 8-104(c) is very clear in its exclusion of customers and the gas they use in the calculation of savings goals:

> Natural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, *which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section,* during calendar year 2009 multiplied by the applicable percentage.

220 ILCS 5/8-104(c) (emphasis added). Section 8-104(m) provides a very specific application process for disqualifying customers from participation and assessment of charges associated with the energy efficiency programs provided under the Act:

> Subsections (a) through (k) of this Section do not apply to customers of a natural gas utility that have a North American Industry Classification System code number that is 22111 or any such code number beginning with the digits 31, 32, or 33 and (i) annual usage in the aggregate of 4 million therms or more within the service territory of the affected gas utility or with aggregate usage of 8 million therms or more in this State and complying with the provisions of item (l) of this subsection (m); or (ii) using natural gas as feedstock and meeting the usage requirements described in item (i) of this subsection (m), to the extent such annual feedstock usage is greater that 60% of the customer's total annual usage of natural gas.
>
> (1) Customers described in this subsection (m) of this Section shall apply, on a form approved on or before October 1, 2009 by the Department, to the Department to be designated as a self-directing customer ("SDC") or as an exempt customer using natural gas as a feedstock from which other products are made, including, but not limited to, feedstock for a hydrogen plant, on or before the 1st day of February, 2010. Thereafter, application may be made not less than 6 months before the filing date of the gas utility energy efficiency plan described in subsection (f) of this Section; however, a new customer that commences taking service from a natural gas utility after February 1, 2010 may apply to become a SDC or exempt customer up to 30 days after beginning service. …

220 ILCS 5/8-104(m)(1)(C). This section provides a specific application and certification process for self-directing customers ("SDCs") with the Department of Commerce and Economic Opportunity ("DCEO"), and significantly, the requirement that these self-directing customers

establish annual energy efficiency reserve accounts for purposes of participating in efficiency measures, albeit non-utility sponsored measures:

> (C) in the case of a SDC, the customer's certification that annual funding levels for the energy efficiency reserve account will be equal to 2% of the customer's cost of natural gas, composed of the customer's commodity cost and the delivery service charges paid to the gas utility, or $150,000, whichever is less;

220 ILCS 5/8-104(m).

This language makes clear that only these customers are to be excluded for purposes of calculating savings and spending goals. Nothing in the clear language of the statue provides or implies that large volume commodity shall be excluded from utility plan spending and savings goal amounts.

The issue as to which gas usage/therms should be excluded from the gas savings and spending calculation is further clarified in Section 8-104(e), the subpart clarifying cost recovery of the programs. Section 8-104(e) provides:

> A utility providing approved energy efficiency measures in this State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission. The tariff shall be established outside the context of a general rate case and *shall be applicable to the utility's customers other than the customers described in subsection (m) of this Section.*

220 ILCS 5/8-104(e). This provision makes clear that all of the utility's customers *except those who receive an exemption through subpart (m) of Section 8-104* shall be assessed the energy efficiency cost recovery charges. There is no exclusion in this language for retail, wholesale or non-Choices for You customers, as the Companies argue. Clearly, the plain language of the Act provides that all of the Companies' customers, except those described in subpart (m) of Section 8-104, shall participate in, help pay for the programs and have their therm usage included in the computation of energy savings.

As for the Companies' assertions about the definition of "retail", a number of observations are important.

First, if the legislature had intended for the term "retail customer" to exclude all these other gas deliveries they would have had no need to explicitly exempt those customers falling under subsection (m), since by definition they would already be excluded. Clearly, by carving out a very specific exemption for these customers, the legislative intent and plain language of the statute would otherwise include their gas consumption. Quite simply, there is no language in Section 8-104 to contradict the clear, limited exemption language of part (m) of Section 8-104, nor any suggestion that a "retail customer" of a local distribution gas company somehow includes only the commodity of residential and small business customers, but not larger commercial customers for purposes of calculating *both* gas savings goals and spending limits.

In addition, the plain language of the statute that savings goals shall be "based on the on the *total amount of gas delivered* to retail customers." [Emphasis added][6] The specific reference to "gas delivered" seems to clearly indicate an intent to focus on deliveries, not just commodity, and to ensure that *all gas delivered* is included. The Companies do not normally classify these customers as "wholesale," and there is no justification for asserting these delivery customers are not retail customers of the Companies. Certainly, if small customers purchasing commodity from a third party are considered "retail" — as the Companies have asserted by including their transportation volumes — there is no reason just being larger would somehow make a customer become "wholesale" rather than "retail." Rather, the terms "retail" and "wholesale" should be considered based on standard English language definitions. The exclusion of "wholesale" customers would simply indicate that any gas deliveries to a customer for resale should be

[6] *See* 220 ILCS 5/8-104 (c), (d) and (m).

excluded (in other words, the customer could be viewed as a wholesale rather than retail customer if it is not the ultimate end-user of the gas). AG Ex. 1.0 at 10-11.

Also, the Act taken *in toto* clearly creates contradictions and illogical conclusions if one were to agree with the Company's interpretation. While Mr. Korenchan points to the legislative transcript, the colloquy itself sheds little light on the issue.

In the transcript referenced by the Companies, Representative Reitz asks Representative Flider to clarify the distinction as to which customers are excluded by providing a specific example of "merchant electric generators" and asking if this "wholesale" customer would be included. Representative Flider responds "no." Merchant electric generators would be excluded under subsection (m) of the Act because they are effectively using gas as a wholesale feedstock to manufacture their electricity and resell that energy to ultimate customers. As a result, it is not persuasive to argue that Representative Flider's response can be viewed as necessarily applying to transportation customers that directly use gas for normal end uses.

Rep. Reitz then goes on to ask, "Stated differently, does the legislation intend to cover for the purposes of assessing charges, delivery service revenues and retail gas commodity purchases, but exclude wholesale gas purchases?" Rep. Flider answers "yes." However, this is simply a tautological question that elicits no new information. Put simply, Reitz has simply asked Flider to confirm whether the term "retail" means that retail is included and "wholesale" excluded. There is no indication of what Flider might consider a wholesale customer, and the context is still in reference to a merchant electric generator.

Rep. Reitz goes on to ask specifically about spending: "…so what is excluded is the wholesale commodity cost, the utilities' cost for transportation for that wholesale commodity is included, right?" Rep. Flider responds "That's correct, yes." Again, this passage sheds no light on what is meant by "wholesale gas purchases".

What is clear is the plain language of Section 8-104. While transcripts of legislative debates can be helpful in elucidating vague statutory provisions that are subject to various interpretations, it is well-settled that when courts are interpreting a statute, the legislature's intent must be ascertained and given effect, and the determination as to intent begins with the plain and ordinary meaning of the statute without resorting to other aids. *Metropolitan Life Ins. Co. v. Washburn*, 112 Ill.2d 486,492 (1986). In addition, it is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject the specific provision controls and should be applied. *People v. Villarreal*, 152 Ill.2d 3658, 379 (1992).

Section 8-104 clearly indicates that exemptions to gas savings and spending targets apply to any customer other than those who qualify under the very specific process outlined in Section 8-104(m). The Company's interpretation of this colloquy raises clear contradictions with the statute as a whole and the clear meaning of the words in parts (c), (e) and (m) of Section 8-104, as noted above. The Act is clear when it refers to the "total amount of gas *delivered*." To then count the delivery costs (implying the delivery service is clearly applicable as a "retail delivery customer"), but not the "total amount of gas" makes no sense. Also, there is an inconsistency in the Act if these customers' usage is excluded from efficiency spending, but section 8-104(e) requires collection of revenues for the programs from all customers except those identified in subpart (m).

In addition, the Act makes clear that even those customers of the gas utility who meet the requirements of the exemption provision must still set aside in an account an amount (2% of the customer's gas cost) dedicated to energy efficiency measures. Section 8-104(m) requires a SDC [self-directing customer] to set aside and certify annual funding levels for an energy efficiency reserve account will be equal to 2% of the customers cost of natural gas, composed of the customer's *commodity cost* and the delivery service charges paid to the gas utility." 220 ILCS 5/8-104(m)(1)(c). (Emphasis added). The Companies' interpretation of Section 8-104 would create a new class of customers ("wholesale") with the distinction of being the only PGL/NS customers who would not have to participate in, and pay for, energy efficiency measures or programs. Nothing in Section 8-104 justifies such a conclusion.

Since the purpose of subsection (m) is clearly to allow these customers an exemption from the more traditional EEP funding mechanism, it again makes no sense that the legislature would choose to impose higher charges on them than other customers that can't meet the subsection (m) criteria. Under the Companies' approach, self-directing customers would get penalized by reserving the full funds based on commodity plus delivery charges, but those who did not bother to apply as an SDC customer would have funding contribution calculations based on explicitly excluding commodity costs. This creates a clear inconsistency in the logic of the Act.

For all of the reasons stated above, the Commission should reject the Companies' proposed Plan and order the Companies to re-calculate the energy savings goals to include the large volume commodity in the calculation.

E. Calculation of Energy Efficiency Plan Spending Limits

As highlighted by AG witness Mosenthal, the Companies are dramatically reducing their available rate impact spending levels as well as their energy efficiency statutory targets, based on their skewed interpretation of Section 8-104 of the Act. The result is the loss of millions of dollars in potential programs to benefit customers.

PGL/NS witness Korenchan testified that he calculated the spending calculations based on the same interpretation of Section 8-104 as used for calculating energy savings goals. As a result, the Companies excluded retail revenues associated with gas commodity from large volume transportation customers for purposes of this calculation. PGL/NS witness Korenchan shows these calculations in Exhibit 2.6 and explains them in his testimony.[7]

Again, the Companies clearly omit the commodity costs associated with the large volume transportation commodity. Effectively, the Companies' approach creates some internal inconsistencies. The Companies' have indicated these customers would be exposed to EEP rider charges,[8] paying into the funds at a consistent rate regardless of whether they purchased commodity from the Companies. Presumably, the Companies also intend for them to be eligible to participate in the EEP programs, since they would be paying into the fund. Therefore, allowing these customers to participate, and claiming savings from these customers, while not including their gas usage in the goals calculations clearly makes no sense. Instead, it provides a windfall source of very large potential savings that can be used to meet energy savings goals, while at the same time excluding their significant consumption from the goals calculations. In addition, including the commodity charges of the SDC customers in their reserve accounts — as Section 8-104(m) mandates, as described above — while not counting the commodity charges for those customers that do not qualify for SDC status, again results in an internally inconsistent policy.

[7] NS-PGL Ex. 2.0 at 16-17.
[8] See NS-PGL Ex. 2.0 at 5-14, NS-PGL Ex. 2.1, and NS-PGL Ex. 2.2.

In short, the Companies have dramatically reduced both their energy efficiency statutory targets as well as their available rate impact cap spending levels. Mr. Mosenthal calculated that correcting this underestimate would result in goals that are *roughly three times higher than the Companies have proposed*. AG Ex. 1.0 at 16. He testified that to calculate the spending side, one needs to estimate the average commodity cost these transportation customers are paying. For purposes of his calculation, he stated that while he would expect most of the larger transportation customers may be able to purchase their commodity at competitive rates that may be somewhat lower than the Companies' commodity charges, he imagined under a competitive environment the Companies would offer reasonably competitive supply. Therefore, he expected the underestimate of applicable revenue to calculate the rate cap to be of the same general magnitude on a proportional basis — in other words also *roughly three times higher than the Companies have proposed. Id.* Mr. Mosenthal further noted that while he believed the above estimated percentage increases are reasonably accurate, albeit the upper bound of the precise figure, he had no way to precisely calculate this for the Companies with the information available to me at the time of filing testimony.

The ICC should reject the Companies' Plan and direct the Companies to properly calculate its gas goals including all transportation gas delivered by the petitioner to end-use customers not falling under the subsection (m) exemption. The ICC should also direct the Companies to properly calculate and document all subsection (m) exemptions, including providing explicit information about the number of customers, if any, that have applied for the SDC option, along with the gas load associated with those customers. Finally, the ICC should direct the Companies to recalculate the rate impact caps to include gas commodity costs for large volume transportation customers, based on a reasonable estimate.

The positive benefit to PGL/NS customers if the Companies included all appropriate transportation customers in their determination of gas savings goals and budget is significant. Mr. Mosenthal noted that this recalculation would have the simple effect of significantly increasing savings and spending, thereby providing greater net benefits to the Companies' customers. In addition, inclusion of these missing gas volumes would have a positive ripple effect across multiple utility service territories. AG Ex. 1.0 at 17-18.

For example, in addition to increasing savings and spending, additional secondary benefits to the overall portfolio include:

- EM&V spending limits, which the Companies acknowledge are a resource constraint,[9] would also increase proportionally. This will enable better, and more extensive and timely evaluations.

- Reduced administrative costs as a percent of overall spending as programs are enlarged, and fixed costs for activities like planning, overhead, data tracking, and other areas are spread over greater levels of effort and savings.

- The Companies could better match ComEd goals for joint and cooperative programs. This is important for a number of reasons. First, it avoids lost opportunities where a customer is engaged with a program but the Companies cannot fully fund all the gas efficiency opportunities because of budget limits. Second, it potentially frees up some funds for ComEd to better meet its statutory goals under Section 8-103 of the Act, and focus on comprehensive solutions while limiting its spending by its more onerous rate cap.

Id. at 18.

For all of these reasons, the Commission should reject the Companies' proposed calculation of energy efficiency savings and spending and order them to re-calculate both, in accordance with Section 8-104, to exclude only the therms associated with Companies' customers that satisfy subsection (m) of the law.

[9] NS-PGL Ex. 1.0 at 23.

III. Evaluation, Measurement & Verification

Section 8-104 of the Act makes clear that the ratepayer-funded energy efficiency programs provided by Illinois utilities must be cost-effective. 220 ILCS 5/8-104(a). ("It is the policy of the State that natural gas utilities and the Department of Commerce and Economic Opportunity are required to use cost-effective energy efficiency to reduce direct and indirect costs to consumers.") This section of the Act squarely places the burden of proving efficiency measures are cost-effective on the utilities.[10] The only way to ensure that programs are, in fact, cost-effective, for purposes of satisfying the requisite Total Resource Cost ("TRC") calculation requirement of Section 8-104(b) is for the Commission to ensure that the evaluation, measurement and verification of ascribed energy savings is fair, fact-based, open and documented. Ensuring that a utility calculates the inputs to the TRC calculation in a fact-based, flexible and documented manner is a crucial task of the Commission in its evaluation of the PGL/NS Plan. As discussed below, the Companies' approach to these issues inappropriately shifts the risk of cost-effectiveness onto ratepayers through it request to deem important inputs in therm savings calculations, thereby undermining the goal "to use cost-effective energy efficiency to reduce direct and indirect costs to consumers." 220 ILCS 5/8-104(a).

[10] Section 8-104(b) defines cost-effective as follows: "For purposes of this Section, "energy efficiency" means measures that reduce the amount of energy required to achieve a given end use and "cost-effective" means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources. 220 ILCS 5/8-104(b).

A. The Companies' Proposals to Deem Gross Measure Savings Values and Net-to-Gross Ratios Should Be Rejected.

PGL/NS witness Michael Marks offered a number of troubling proposals concerning program evaluation in his testimony. He recommended that:

1) Gross measure savings should be "deemed" or fixed during the three-year plan. Adjustments, if any, shall be made on a prospective basis beginning with the second three-year plan period; and

2) Net-to-gross ratios shall be "deemed" or fixed for the duration of the plan and adjustments, if any, shall be made on a prospective basis beginning with the second three-year plan period.

PGL/NS Ex. 1.0 at 14-26; Tr. at 47- 48.

Mr. Mosenthal and other witnesses raised a number of concerns with the Companies' deeming and evaluation recommendations. The most troubling concern relates to the Companies' deeming proposal for the entire three-year plan period, and more specifically, to the deeming of net-to-gross (NTG) ratios. This is inconsistent with previous discussions between other regulated distribution utilities and the SAG, with the ICC's prior Order for the first three-year plan cycle for the ComEd and Ameren energy efficiency plans[11] and the Commission's recent December 21, 2010 order in the Ameren Illinois energy efficiency plan docket, ICC Docket No. 10-0568 and 10-0570. As noted in Mr. Mosenthal's testimony, although there was never a finalized agreement at the SAG, all parties worked toward an agreement on a common framework for how and when to apply net-to-gross deemed values. The Companies' proposal diverges significantly from this draft agreement.[12] The latest working draft of the SAG NTG framework (AG Exhibit 1.2) is attached to this Brief as Appendix A. It should be adopted, as opposed to the Companies' deeming proposals, further discussed below.

---

[11] ICC Orders in Docket Nos. 07-0539, 07-0540 and 07-0541.

[12] Note this agreement was originally worked on by the stakeholders, ComEd, Ameren and DCEO and did not include gas-only utilities. However, the Petitioner has attended SAG meetings on a regular basis and has been aware of this agreement and had the opportunity to suggest modifications to it during the period when it was developed.

1. Gross Savings Values

Gross measure savings refer to the estimated total savings (therms) that will be saved by a particular measure installed, without regard for the total *net* impacts of a program that should be adjusted for things like free riders — those participants who installed a measure but would have installed it without the program. AG Ex. 1.0 at 25. Typically, utilities will track measure installations and gross savings in their database, to be adjusted for things like free riders in the future, to ultimately arrive at the *net* impacts of a program. For all intents and purpose, the Companies' term "per unit therm savings" is synonymous with gross measure savings. *Id.*

Peoples Gas and North Shore are proposing to deem gross measure savings for the full three-year period.[13] A review of NS-PGL Exhibit 1.2 (the Plan) includes an extensive list of measures offered under each proposed program, with little explanation of the basis for the measure values. For example, are the therm savings for all measures listed in this exhibit gross savings or do they include a net-to-gross calculation? It is unclear. While the Company makes a general reference to sources for the deemed savings values[14], no explanation is provided as to what sources contributed to each deemed savings value. *See, e.g.,* NS-PGL Ex. 1.2 at 49. As a result, and given the limited time and resources available for this docket, it is unreasonable to

---

[13] NS-PGL Ex. Ex. 1.0 at 17 (Marks).

[14] Savings estimates for individual measures or programs have been developed in various manners. This includes calculating impacts using generally accepted engineering algorithms based on a set of reasonable assumptions to input variables, building simulation modeling, and reference to existing data sources where such values have already been calculated. Because of the diversity in equipment and energy consumption patterns across multiple building types and end-uses, there exists a variability in these savings estimates as they relate to program design and target markets, particularly at the planning stage of these programs. With this in mind, each of the savings estimates has been compared to several other sources including those developed by the other gas utilities. A collaborative effort throughout the planning process between the utilities allowed for comparison of the measures and has led to a consistency in approach, even if the saving values differed. Where possible, the use of local references was given priority over the use of data from neighboring states or national data. Some of these references include the Midwest Residential Market Assessment and DSM Potential Study by the Midwest Energy Efficiency Alliance and the existing energy efficiency program run by Chicagoland. A similar approach was taken in the development of project costs used in the analysis and in the development of proposed rebate levels keeping in mind that there are already incentive amounts available from Chicagoland.

expect these values to be deemed *for a full three years* without a more thorough review, an opportunity to understand the underlying assumptions, and a collaborative discussion of their appropriateness. In addition, Mr. Mosenthal testified that his review of the attachment to Companies' response to Staff data request JLH 1.04 indicates at least some problems with these assumptions. AG Ex. 1.0 at 25-27. Mr. Mosenthal, who has been an active participant on behalf of the People in the electric SAG, recommended that the ICC only *provisionally deem measure savings values*, and direct that the Companies address any appropriate modifications with the SAG. He recommended that the ICC lock-in the values for the first plan year (PY1), with the expectation that any appropriate adjustments could be made to be used prospectively starting at the beginning of PY2. In that regard, the People believe that the Commission should direct that:

1. Deemed gross measure savings for measures provided in the Companies' Ex. 1.2 and JLH 1.04 be approved for PY1 only, and only for "prescriptive" or "standard" measures;

2. No deeming of gross measure savings be permitted for any "custom"[15] measures – a position with which the Companies appear to agree. NS-PGL Ex. 3.0 at 8-9;

3. There should be an ongoing SAG process to review and adjust measure values following the provisional deeming, and SAG members as well as the Petitioner, its implementers, and evaluators should be able to propose modifications;

[15] Most utility energy efficiency programs encourage customers to adopt efficiency through two general approaches, depending on the measure. Prescriptive or standard measures generally refer to those measures that (1) have relatively consistent and predictable savings values *on average*, (2) are cost-effective and applicable over a wide range of customers, and (3) are generally promoted through some sort of prescriptive or standard offering — for example, $200 rebate of a residential-sized high efficiency gas furnace — regardless of the customer. This approach makes sense for these widely applicable measures and results in reasonably accurate average savings across a large number of program participants. "Custom" measures, on the other hand, are highly customized measures or projects in which savings and cost-effectiveness can vary dramatically by customer, the numbers of projects tend to be lower than for prescriptive measures, and specific opportunities and measure equipment and configurations may be highly customized. A good example is modifications to an industrial process that results in significant cost-effective savings for a particular customer, but may not be widely applicable to other customers, or may save a dramatically different amount for a different customer. For custom measures, virtually all savings calculations are generally based on standard engineering practice, taking into consideration the specific customer's unique circumstances, and also screened for cost-effectiveness to ensure that the measures pass the Total Resource Cost test.[15]

4. Ongoing modifications should be adopted no later than at the beginning of the following plan year (June 1) based on establishment of new values in the SAG, and, thereafter, each June 1 based on any appropriate new information; and

5. The Companies (ideally in collaboration with the other Illinois gas and electric utilities) should establish and maintain a Technical Reference Manual (discussed in more detail later in this Brief) that documents in a transparent way how savings are estimated, and supports on-going effective modification and version control. ELPC witness Geoff Crandall similarly advocated the adoption of a statewide TRM. ELPC Ex. 1.0 at 20.

Initially, at least, there was a lack of clarity on the issue of whether the Companies are proposing to deem "custom" measures. AG Ex. 1.0 at 27. For example, for the C&I Custom Program, the Companies simply projected a gross savings value of 6,000 therms per project. *Id.* Similarly, a value per building or per project of 17,400 therms is shown for retro-commissioning. *Id.* Certainly, deeming these types of projects is not appropriate and would likely result in substantial errors in estimating program impacts. Mr. Mosenthal pointed out that "custom" measures, are highly customized measures or projects in which savings and cost-effectiveness can vary dramatically by customer, the numbers of projects tend to be lower than for prescriptive measures, and specific opportunities and measure equipment and configurations may be highly customized. A good example is modifications to an industrial process that results in significant cost-effective savings for a particular customer, but may not be widely applicable to other customers, or may save a dramatically different amount for a different customer. For custom measures, virtually all savings calculations are generally based on standard engineering practice, taking into consideration the specific customer's unique circumstances, and also screened for cost-effectiveness to ensure that the measures pass the TRC test. AG Ex. 1.0 at 26-27.

In rebuttal testimony, NS-PGL witness Marks stated that these "custom" figures are only to be used as a proxy and do not fall within the Companies' larger proposal to deem measure savings. NS-PGL Ex. 3.0 at 9. To ensure that no deeming is a part of the custom programs, the Commission should make clear in its Order that the Companies *not* deem any savings estimates for custom measures. In addition, it should reject the Companies' deeming of gross values proposal, and enter an order in accordance with the five-point framework described above.

2. Net-to-Gross Ratios

Net-to-gross ("NTG") ratios refer to factors developed through program evaluations to adjust the *gross* savings utilities are tracking to reflect the ultimate *net* impacts of the programs. Gross savings are generally adjusted for free ridership and spillover. AG Ex. 1.0 at 23. Free ridership refers to those program participants who would have installed the efficiency measures on their own. While they are counted in the program data tracking, no *net* savings are actually occurring. Conversely, spillover refers to efficiency measures adopted by customers because of either direct or indirect influence of the program, but who do not formally participate in the program and are therefore not initially counted in the utility tracking system of gross savings. *Id.;* Tr. 48. As a result, spillover can increase net savings beyond the gross savings originally tracked by the utility. AG Ex. 1.0 at 23.

As noted above, the Companies request authority to prospectively fix or deem values for NTG ratios throughout the three years of the Plan. These values would only be updated in preparation for the next three-year plan. Tr. at 48; NS-PGL Ex. 3.0 at 10. However, as explained by Mr. Mosenthal, NTG ratios are a function of many things, with the most important being program design and implementation procedures, as well as factors specific to particular measures, such as current market saturations and barriers. As a result, a NTG ratio is not some sort of fixed fundamental number that cannot vary. Rather, it can be heavily influenced by utility practices including how it markets programs, how it sets incentive levels, the assistance and "handholding" it offers customers, and numerous other implementation details. *Id.* at 29. During cross examination, NS-PGL witness Marks, in fact, agreed that a number of factors affect the net-to-gross calculation of a measure's savings, including program design, how high or low an incentive level is set, how a program is marketed and contractor behavior in marketing or promoting an efficiency measure. Tr. 49.

Once these NTG values are locked in, perverse incentives are created for the Company that diminish achievement of cost-effective programs. Mr. Mosenthal testified that by holding the Companies accountable to evaluated results, they have a strong incentive to strive to maximize NTG ratios because they want to get credit for maximum savings and avoid penalties. Under the Companies' deeming proposal, they would be shielded from the impacts of poor net savings performance. At its worst, deeming can encourage high levels of free ridership; at best, it reduces the incentive for the Companies to continually assess markets and consider how customers are responding to its programs, and whether shifts in program designs or budgets are appropriate. Given that the Companies request flexibility to change program designs, modify incentives, and shift resources, PGL and NS should also retain the responsibility to show that it has captured savings of at least the statutory performance goals. Otherwise, the opportunities for gaming the system by making changes based on locked-in values that may no longer be correct can result in poor decision-making and programs that are less cost-effective for ratepayers. AG Ex. 1.0 at 29.

As recommended by AG witness Mosenthal, the best approach to ensuring cost-effective programs is to reconsider deemed parameters at least annually in collaboration with the Stakeholder Advisory Group ("SAG").[16] In addition, because the Companies are just beginning their first statutory EE plans, deeming of NTG ratios should not be done because there is no evidence the NTG ratios the Companies propose are based on their specific plans or any studies that would support them. Commission deemed parameters need to be reconsidered at least annually in collaboration with the SAG.

There are many reasons why the Commission should order the Companies to collaborate with the SAG in the development of measure NTG values, not least of which is the fact that the Companies simply failed to carry their burden of proving their

---

[16] The Stakeholder Advisory Group ("SAG") was first established by the Commission in ICC Docket Nos. 07-0539 and 07-0540, Ameren and ComEd's petitions for approval of electric energy efficiency plans. The SAG consists of various stakeholders, including Commonwealth Edison Company and the Ameren Illinois Utilities, who have met since 2008 to work with the utilities to reach consensus on issues such as program design and evaluation metrics. In its Orders in ICC Docket Nos. 07-0539 and 07-0540, the Commission stated:

> All parties involved, with the possible exception of Staff, maintain that a Stakeholder Advisory Committee is essential to the success of the Plan. This Commission agrees with ComEd that it should establish a stakeholder process to review ComEd's progress towards achieving the required energy efficiency and demand response goals and to continue strengthening the portfolio. The Stakeholder group's responsibilities include, but are not limited to: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and against statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs where the change is more than 20%.

ICC Docket No. 07-0539, Order of February 6, 2008 at 24; ICC Docket No. 07-0540, Order of February 6, 2008 at 32. Within the past year, both Nicor Gas Company and Peoples Gas and North Shore Gas representatives have attended various SAG meetings.

deeming proposal was reasonable and fact-based. NS-PGL witness Marks discussed the basis for the NTG ratios at page 22 of his testimony, stating that:

> …the Utilities started with a simple premise that the range of NTG would be between 100% and 70%. The Utilities believe that a measure or program with an NTG ratio below 70% should not be offered. Where market intelligence was available, we made assumptions that were consistent with this information. Where no market intelligence was available, we assumed 80% to be a reasonable estimate based upon industry experience.[17]

There are a number of problems with this position. First, Mr. Mosenthal disagreed with the Companies' contention that measures or programs with an NTG ratio below 70% should not be offered. He called this decision "arbitrary", and stated it is not supported by best practices. Likewise, the Act requires that programs be evaluated based on the total resource cost ("TRC") test. 220 ILCS 5/8-104(b). Many energy efficiency programs can and are very cost-effective with NTG ratios below 70%, according to Mr. Mosenthal. AG Ex. 1.0 at 33.

Second, it appears the Companies' starting point was simply an *a priori* assumption that all NTG ratios would be no lower than 70%, regardless of what "market intelligence" might be available, or whether this is consistent with the best available data. In short, it appears that the Companies simply defined NTG ratios as being between 70% and 100%, and then made assumptions consistent with that premise. *Id.*

NS-PGL witness Marks went on to provide an alleged basis for the NTG ratios proposed in some instances. NS-PGL Ex. 1.0 at 22. However, the "basis" in most cases is, again, simply an assumption for which the Companies have been unable to explain any basis. When asked for any analysis or support for the proposed NTG ratios, and all

[17] NS-PGL Ex. 1.0 (Marks) at 22.

documents related to the "market intelligence" relied on in AG 2.05 (a), the Companies responded: "The rationale for the net-to-gross (NTG) assumptions is contained on page 22 of NS-PGL Ex. 1.0." This is the same page referenced above in Mr. Marks' testimony. In other words, it appears that the Companies have not in fact relied on any "market intelligence," as they failed to provide even a single document or workpaper to show the market data upon which they supposedly relied. In short, support is woefully lacking for the Companies' proposed NTG ratios, other than the simple assumptions they made. Mr. Mosenthal provided a specific list of assumptions made by the Companies and detailed the lack of foundation for those assumptions:

1. "The utilities assumed that the two direct install programs (multifamily and small business) and the behavioral change program would have no free ridership or spillover." NS-PGL Ex. 1.0 at 22.

   The only "basis" appears to be that they "assumed" the value of 1.0 NTG, as the Companies fail to provide any additional support for this assumption. AG Ex. 1.0 at 34.

2. "For the C&I custom rebate program, the Plan is based on a 95% NTG ratio since each project would be reviewed prior to granting any incentive." NS-PGL Ex. 1.0 at 22.

   This statement plausibly provides a "basis", however, there is no logical or rational explanation for why the Companies reviewing a project would somehow change the NTG ratio. All custom programs review projects prior to granting incentives, but this has absolutely no bearing on whether a customer is a free rider or not.

   In addition, this is an example in which the Companies clearly did have "market intelligence" they chose to ignore — namely the PY1 ComEd electric C&I custom rebate program evaluation. The Companies claim that this will be a coordinated program, and the fuel used in a custom program should not have a significant impact on NTG ratios. Given this is the exact same program that PGL/NS will be delivering with ComEd, certainly ComEd's actual evaluated NTG ratio would be much more appropriate. This value is 72%, significantly lower than the Companies' proposal. AG Ex. 1.0 at 34.

3. "For the C&I prescriptive measures and retrofit-commissioning, the Plan is based on an 80% [default] NTG ratio." NS-PGL Ex. 1.0 at 22.

   Again, the Companies appear to have no "basis" or market intelligence, and are simply assuming a default value. AG Ex. 1.0 at 35.

4. "For residential prescriptive furnaces (the key measure in the program), the Plan is based on a 90% NTG ratio for the People Gas service area, based on the Chicagoland experience and trade ally market intelligence, and a much lower 70% for North Shore Gas based on the same sources." NS-PGL Ex. 1.0 at 22.

   These assumptions are supposedly based on the "Chicagoland experience and trade ally market intelligence." However, to my knowledge the Chicagoland experience is not based on actual evaluated results from Chicagoland. Rather, it is likely simply a default assumption once again. While trade allies should have some insight into likely NTG ratios, the Companies appear unable to provide any additional information whatsoever about what they learned from trade allies. This level of explanation is clearly not sufficient to lock in values for a full 3 years with no ability to support it. In addition, as I discuss below, I believe there is significant market intelligence readily available for this measure that would indicate the Companies proposed values are much too high. Why the Companies choose either not to research this information, or to ignore it, is not clear. AG Ex. 1.0 at 35.

5. For all other residential measures the plan is based on an 80% [default] NTG ratio. NS-PGL Ex. 1.0 at 22.

   Again, clearly this assumption has no basis in fact, but rather is based on a simple default value. AG Ex. 1.0 at 34-36.

In addition, Mr. Mosenthal identified key concerns with the Companies' NTG assumption for residential gas furnaces – the key measure for the entire residential sector. AG Ex. 1.0 at 36-38. These identified concerns all argue for the Commission ordering the Companies to participate in the SAG process recommended by Mr. Mosenthal, so that these important factors affecting the cost-effectiveness calculation can be established in a collaborative, informed fashion and adjusted on a going forward basis for the variable that Mr. Marks himself admits affect the calculation of the NTG ratios. Tr. at 49.

Yet another reason to reject the Companies' deeming proposal is that it effectively shifts much of the fundamental performance risk -- that is actually achieving *cost-effective*, *verifiable savings* -- from the Companies to their ratepayers. AG Ex. 1.0 at 28. By deeming NTG ratios and measure savings, Peoples Gas and North Shore are simply held to achieving the number of projects and measures that get installed, regardless of whether actual EEP performance meets the performance targets the legislature clearly set out in the Act. The simple fact that the Act imposes both performance targets of specific savings values and penalties to the Companies for non-performance shows the intent was for this risk to be borne by *the utility*, rather than the customers. *See* 220 ILCS 5/8-104(f). By locking in deemed values for the full period of the plan, the Companies are not only relieved of much of the performance risk intended to apply to them, but also no longer have as clear and strong incentives to maximize savings. AG Ex. 1.0 at 28-29.

Ironically, PGL/NS witness Marks argued that the ratepayers would bear *more* risk by not deeming NTG ratios. He stated:

> If savings are adjusted downward [based on a change in NTG value], and program spending can be increased to make up for the deficit and meet the statutory goal, then these costs will be passed on to the ratepayers. Thus it is the ratepayer, not the utility or implementation contractor that bears the risk here. Only if the change causes the utility to fail to meet the statutory goal and thus has to pay a penalty will the utility or its contractor bear any risk. Given the size of the statutory goals for the first three years, this is an unlikely outcome.[18]

This logic seems to come from a fundamental belief that is at odds with the legislature's intent and the public interest. Mr. Marks seems to view capturing cost-effective efficiency savings as a *negative* for ratepayers, such that if the Companies had to work harder to capture cost-effective savings and meet statutory goals the ratepayer would be hurt because it would cost more. However, clearly, if a deemed NTG was

[18] NS-PGL Ex. 1.0 at 21.

locked in under this scenario, the ratepayer would have been hurt more. They would still have paid for the efficiency programs, but in the end would not receive the full energy savings benefits that achievement of the statutory goals strive to create. Mr. Mosenthal likened this analysis to suggesting that a car owner is better off if their mechanic fails to properly fix their car because it would have cost more to do it properly. AG Ex. 1.0 at 30.

Mr. Marks further suggests that the risk to the utility is relatively minor, and only an issue if the goals could not still be captured. He indicates that the statutory goals in the first three years are relatively easy to capture, and that the spending limits are far higher than necessary to achieve the goals. NS-PGL Ex. 1.0 at 21. Thus, he makes clear two points:

> 1. The performance risk faced by the Companies by not deeming NTG values is low, and apparently not much of a concern for the Companies during this first three-year plan;
>
> 2. Even if it turned out that initial NTG assumptions were poor and evaluations identified much lower values, the Companies agree that failure to meet the goals is an "unlikely outcome" because the proposed spending levels and statutory savings goals are relatively low.

AG Ex. 1.0 at 31. Clearly, the risk to the Companies of adopting Mr. Mosenthal's proposed NTG framework is negligible given these realities.

There are still other deficiencies in the Companies' NTG deeming proposal. The Companies proposal to choose 80% as a default NTG value where no "market intelligence" was available. NS-PGL Ex. 1.0 at 22. However, this is exactly the approach and NTG-value the ICC rejected in its Order in the 2007 electric EEP dockets because it did not reflect actual data about the specific program, market, or Illinois territory. Specifically, three years ago, the issue of deeming NTG ratios was litigated in

Dockets 07-0539, 07-0540, and 07-0541, related to the first three-year plans for the electric EEPs. The ICC in its Order in these dockets declined to deem NTG ratios, and determined that utilities should estimate for planning purposes NTG ratios that are most realistic based on review of similar efforts in the Midwest and in consultation with its evaluation contractors, but that NTG ratio estimates from evaluations should be used retroactively until some program experience is developed.[19]

NS-PGL witness Marks claims that decisions made regarding the electric side of energy efficiency in Illinois are irrelevant on the gas side. NS-PGL Ex. 3.0 at 12. The People could not disagree more. While the SAG NTG Framework that was developed by parties focused on the electric EEP's second three-year plan, the Companies' proposed EEP is completely analogous to the issues the ICC considered in 2007.[20] As pointed out by Mr. Mosenthal, the similarly relevant issues are:

1. This is the first three-year plan, and as such there is the highest level of uncertainty about utility performance and capability, and the ultimate appropriate NTG ratios;
2. Because the goals are relatively low during the first three-year plan, and budgets are not constrained, there is ample time and opportunity for the Companies to hedge against risk, possibly striving to increase savings and participation as a buffer and also to adjust its programs after some early evaluation or other study results, if appropriate; and
3. There appears to be little basis for the NTG ratios proposed, with many of them based on the Companies' simple premise that NTG ratios should range between 70 and 100 percent. Where no additional "market intelligence is available," the Companies assumed an 80 percent default NTG ratio, specifically what the ICC rejected in its 2007 Order.[21]

AG Ex. 1.0 at 32.

---

[19] See, for example, ICC Final Illinois Commerce Commission Order in ComEd's ""Commonwealth Edison Company Petition for Approval of the Energy Efficiency and Demand-Response Plan pursuant to Section 12-103(f) of the Public Utilities Act", Docket No. 07-0540, February 6, 2008 at 44 (hereinafter referred to as the "Order").

[20] Although the initial NTG framework is applicable in the instant docket, it is important to note that the SAG has moved somewhat beyond the initial situation the ICC was dealing with in 2007— where no programs had yet begun or been evaluated.

[21] NS-PGL Ex. 1.0 at 22 (Marks).

PGL/NS witness Marks complained that "[w]ithout certainty on the amount of savings, [implementation contractors] will be credited with for each measure they deliver, a performance based contract becomes too risky for the implementation contractor."[22] However, as noted by Mr. Mosenthal, the Companies' response to ELPC 1.05 shows that there are many ways one could still sign a performance contract with its EE program implementer, Franklin Energy Services. For example, the contract could specify gross therms, holding Franklin to gross savings performance and the Companies' absorbing any NTG risk. In fact, the response states that Franklin is "indifferent to the deemed savings" because in the end the math ultimately just reduces the "specific participation goals."[23] Clearly the Companies could simply develop participation goals as a performance metric as well. The difference is simply that the Companies desire to shed *all* of their risk, even though they acknowledge this risk is minor and could only result from an "unlikely outcome." While Mr. Mosenthal testified that he generally supports performance contracting, it is hardly in the best interest of PGL/NS ratepayers for the Companies to shift all of the risk onto its customers. Yet, the Companies' deeming and NTG proposals do just that.

For all of these reasons, the Companies' proposal to deem NTG values should be rejected. Instead, the Commission should adopt the SAG NTG framework, as described below.

B. The SAG NTG Framework Should Be Adopted

As mentioned above, in collaboration with Ameren, ComEd and DCEO stakeholders developed a tentative agreement for deeming NTG ratios that would provide the utilities significantly reduced risk, while still preserving incentives for utilities to strive to maximize

[22] NS-PGL Ex. 1.0 at 25 (Marks).
[23] PGL-NS Response to ELPC 1.05.

NTG ratios and make appropriate mid-course corrections. Because many of the electric programs have already been evaluated, this provides some certainty to utilities on savings claims for those programs that have evaluated results, which can be deemed until new values are available for prospective use.

1. Where a program design and its delivery methods are relatively stable over time, *and* an Illinois evaluation of that program has estimated a NTG ratio, that ratio can be used *prospectively* until a new evaluation estimates a new NTG ratio.
2. In cases that fall under #1 above, once new evaluation results exist, these would be used going forward, <u>to be applied in subsequent program years following their determination</u> until the next evaluation, and so on.
3. For existing and new programs not yet evaluated, and previously evaluated programs undergoing significant changes — either in the program design or delivery, or changes in the market itself[24] — NTG ratios established through evaluations would be used *retroactively*, but could also then be used prospectively if the program does not undergo continued significant changes, similar to #1 above.
4. For programs falling under #3, deeming a NTG ratio *prospectively*, may be appropriate if: the program design and market are understood well enough to reasonably accurately estimate an initial NTG *(e.g.,* based on evaluated programs elsewhere); <u>or</u> it is determined that the savings and benefits of the program are not sufficient to devote the evaluation resources necessary to better estimate a NTG ratio.
5. The SAG will recommend to the Commission, in advance of the evaluation study start date, whether the NTG values resulting from the evaluation study should be applied in the year they are determined (due to significant program, technological, market changes, or other factors) or only in the following program year.

AG Ex. 1.2 at 2, 3.

The above framework achieves four things. First, it provides some certainty of savings claims for Program Administrators ("PAs") for the *majority* of their portfolio savings, thus dramatically reducing short term performance risk. For example, the Residential lighting and C&I Prescriptive lighting programs at this point provide the vast majority of portfolio savings, have not undergone significant changes since PY1, and have been evaluated.

[24] An example of a market change might be where baselines have improved significantly and the likely free riders are growing substantially because of it.

Second, it continues to provide a strong — albeit diminished — incentive for PAs to work to maximize NTG ratios and net savings by continually doing the necessary research to understand markets and make program changes as appropriate in a timely fashion. This is because, while current savings may be counted on a "NTG deemed" basis, future evaluations that find a significantly diminished NTG ratio will increase PA challenges to meet future goals. Thus, longer term the PAs are still served best by minimizing free riders.

Third, it ensures that decisions about new initiatives or significant program changes are made recognizing and balancing performance risk as part of the overall portfolio. This provides PAs with an incentive to design and deliver these programs to minimize free riders initially, and be held accountable for results. Thus, PAs can experiment with innovative strategies (since these will represent a minority of portfolio savings, significant flexibility and hedging ability will exist) while not encouraging program designs or delivery strategies that are likely to have very high freeridership or questionable cost-effectiveness.

Finally, it provides a mechanism to manage evaluation resources to ensure they are spent most effectively, and on those areas with the greatest impact and/or uncertainty. AG Ex. 1.2 at 2-3.

The SAG framework was never *formally* agreed to by all parties. It is, however, adopted as part of the proposed settlement in ComEd Docket No. 10-0570 related to its second three-year electric plan. As noted above, a copy of the latest working draft of the NTG framework, AG Exhibit 1.3, is attached as Appendix A to this Brief.

As noted by Mr. Mosenthal, the framework developed was a reasonable approach at balancing utility risk, ratepayer risk, accuracy, and the need to focus EM&V resources on those areas where they are most useful. In orders issued on December 21, 2010, the Commission ordered the adoption of the NTG Framework for purposes of developing these ratios in the ComEd and Ameren programs. *See,* e.g. ICC Docket No. 10-0568, Order of December 21, 2010 at 70.[25] There is no reason to treat the gas utility programs any differently when it comes to ensuring consistent, fact-based and verifiable inputs into the TRC calculation. The SAG framework provides a balanced approach that allows for deeming of NTG ratios once some reliable and relevant data about the program is developed, while also ensuring that ratepayers get what they pay for.

As noted by Mr. Mosenthal, even the Companies have acknowledged its risk of not achieving the statutory savings goals is small.[26] He testified that NTG-related risks can only be managed with imperfect information. For example, under a retroactive framework the Companies cannot know the ultimate NTG ratio to which it will be held. However, all else being held equal, the Companies and their implementation contractors still have many day-to-day implementation and program design decisions that can influence NTG ratios, and can be managed to optimize NTG ratios. Just as students cannot know what grade they will receive from a teacher in advance, they can still manage the risk by performing at a high level and trusting that, all else being equal, the better the student's efforts, the higher their final grade will be. As a result, holding the utilities accountable for actual NTG ratios, even if applied retroactively, provides the Companies with the correct incentives — namely, to strive for the best possible outcome.

[25] At the Open Meeting, Chairman Flores specifically moved that the Order be amended to adopt the NTG framework and the creation of a statewide TRM. The motion carried, with three commissioners voting yes and two commissioners abstaining. No transcript has yet been filed on e-Docket of the meeting. The People have filed a motion seeking clarification of this decision in the Ameren (10-0568) Order, which includes some contradictory language on the point.

[26] NS-PGL Ex. 1.0 at 21 (Marks).

The Utilities argued that because of this performance-based contract, and to effectively manage such a contractual relationship, it is critical to have the ability to track performance in "real time", and that if impacts are changed midstream, the implementation contractor cannot know how well they are doing in meeting goals and thus cannot manage their costs. NS-PGL Ex. 1.0 at 25. Without certainty on the amount of savings they will be credited with for each measure they deliver, a performance based contract becomes too risky for the implementation contractor, according to the Companies. *Id.* These concerns about evaluation cycles, timing and budget constraints are strawman arguments. Mr. Mosenthal noted that while impact evaluation studies would lag programs by at least one year, and therefore would not produce results until the end of 2012, the Companies would still have ample opportunities to initiate mid-course corrections. As a result, the Companies should be able to easily adjust their programs and spending to achieve their savings goals. Further, Mr. Mosenthal disagreed that full blown and expensive impact evaluations are necessary to reasonably estimate NTG ratios. He noted that a participant survey, for example, could be done for something like gas furnaces (perhaps the most uncertain NTG ratio with the biggest potential impact) even after six months of program delivery and be available prior to even PY2 at relatively modest cost. At that point, about 83% of the three-year savings goals would still be planned for future program years. AG Ex. 1.0 at 42.

Finally, because the goals are relatively low for the first three-year period and funds are more than sufficient, the Companies have acknowledged it should be able to easily over-achieve goals somewhat to hedge against a surprisingly low NTG ratio estimate.[27] Even if this overachievement turned out to be unnecessary to meet goals, the additional cost-effective savings would offer ratepayers greater net benefits while still ensuring spending under the rate caps.

[27] NS-PGL Ex. 1.0 at 21 (Marks).

*   *   *

In sum, the People urge the Commission to reject the Companies' proposed deemed Gross Savings and NTG ratios. The Companies have not provided any sufficient explanation to support these proposed values as particularly likely for its programs or measures. Instead, the Commission should adopt the basic framework established by the SAG and the primary guidance and principles behind appropriate NTG treatment. Under this approach, the Commission should order the Companies to work with the SAG to establish a high level evaluation plan that identifies what NTG values will be measured, when results would be available, and how they would be used prospectively in terms of starting dates and duration. Under this approach, the SAG would also be free to agree to propose to the Companies deeming a NTG value based on currently available information, and forego evaluation of NTG ratios for a particular program or measure if it agreed that the resources necessary to refine the estimate were not justified based on EM&V resources, uncertainty, and the level of ultimate likely impact.

C. Technical Resource Manual

Some jurisdictions maintain a set of algorithms that define all parameters involved in estimating measure savings rather than simply a table of kWh/year or therms/year. Often these are referred to as "technical reference manuals" ("TRM"). Both AG witness Mosenthal and ELPC witness Crandall recommended the Commission adopt a Technical Reference Manual. AG Ex. 1.0 at 26*;* ELPC Ex. 1.0 at 15. The People urge the Commission to direct the Companies (along with the other gas and electric utilities) to develop a statewide TRM. This is important for transparency of EE measure assumptions, documentation of savings achieved, ease of on-going modifications and version control, and consistency. Such statewide manuals have been developed in Pennsylvania, Ohio, Michigan and other states. ELPC Ex. 1.0 at 20.

As explained by Mr. Crandall, the TRM would include a wide array of information on the details of natural gas and electric energy efficiency and demand response measures and programs. *Id.* This typically includes: cost of measures, cost of installation, savings estimates in terms of estimated therms, kWh, KWs. In addition the TRM would include measures costs, useful life estimates for program measures, estimated realization rates, net-to-gross, "deemed" savings estimates for planning purposes and similar information. The energy efficiency program developers, implementers and evaluation contractors would use the TRM values for developing and modifying programs as well as the initial process or impact analyses to be done throughout the state. Spelling out clear assumptions and parameters in a TRM provides stakeholders and the ICC with greater transparency, and provides a single place where all assumptions are documented. These assumptions can vary by utility where appropriate, for example because of weather variations.

This approach allows easier global adjustments and on-going modifications, and allows for proper documentation of what changed and when. This is critical for evaluators and prudency reviews, since the deeming process permits certain values to be used only for specific periods, and then requires different values to be adopted by a certain date. Establishing a TRM that clearly documents effective dates and has good version control will go a long way to improving utility data accuracy and facilitating critical review of data.

Finally, adopting a TRM would facilitate a much more open, clear, productive, and well-documented SAG review and modification of deemed values. For all of these reasons, the Commission should require the Companies to participate in a statewide development of a TRM. It should be noted that the Commission stated orally on December 21, 2010 that it would mandate the development by both ComEd and Ameren of a statewide TRM. ICC Docket Nos. 10-0568, 10-0570. (The People have pending a Motion to Clarify that Order.) All utilities (and ratepayers) would benefit from the creation of such a manual, and it should be ordered in this docket at well.

D. Evaluation Cycle

The Companies propose that an independent evaluator conduct at least one impact evaluation and one process evaluation for each program during the three-year Plan. NS-PGL Ex. 3.0 at 4-5. The People object to this proposal. As noted by Mr. Mosenthal, at this point the Companies' recommendation is premature because it is too prescriptive and could result in a poor allocation of limited EM&V funds. AG Ex. 1.0 at 43. Fundamentally, limited EM&V funds should be allocated where and when they are most useful. This determination should consider things such as, but not limited to:

- How new is the program?
- How much of the Companies' resources are being expended on a given program?
- When did the program start?
- Is the program expected to be continued for a long time or be phased out?
- What share of the portfolio impacts come from the program?
- How uncertain are a particular program's impacts, and how big is that uncertainty relative to the overall portfolio savings?
- Is the program a new, complex delivery system, such that an early process evaluation is warranted?
- Are the market and program well understood, and are reasonable values such as NTG ratios known with reasonable certainty from other jurisdictions or publicly available studies or data?
- Is the market very dynamic and changing rapidly enough to warrant two evaluations during a single plan period?

Id. at 44.

While the above is not a comprehensive list, the point is that planning only for large, expensive and very time-consuming evaluations and not allowing flexibility for smaller studies may further constrain these resource decisions. Also, automatically engaging in impact evaluations on every program once and only once may not result in the optimal allocation of these scarce resources. For example, Mr. Mosenthal noted that perhaps more resources should be focused early on for process evaluations in lieu of some impact evaluations. Often an "early-look, mini-process evaluation" can be very important in the first year to assess whether implementation procedures are working as expected and whether the Companies, their contractor network and data systems are working properly. Also, Mr. Mosenthal testified that he would expect that some early attention to process assessments of the effectiveness of joint and cooperative programs may be important (with funding shared by PGL/NS and ComEd or other program administrators). *Id.* at 44.

To be clear, at issue is not how many evaluations should occur. Rather, the 3% limit (220- ILCS 5/8-104(f)(8)) on evaluation spending supports targeting resources where they provide the greatest overall value. However, as noted above, correcting the Companies' erroneous interpretation of how to calculate the statutory savings goals and spending caps will provide roughly three times greater evaluation funds, which will go a long way to offset this resource problem. Section 8-104(f)(8) of the Act allows the Companies to treat their full three-year evaluation budget as a single cumulative limit, rather than constraining each year to only 3% of each year's budget. 220 ILCS 5/8-104(f)(8).

Managing limited evaluation resources may require trade-offs between important objectives. One objective is to provide the ICC and ratepayers with adequate assurance that the

Companies' programs are indeed providing the net savings that ratepayers are paying for, and are doing so efficiently and effectively. Another objective is for the Companies and their contractors to learn from evaluations about ways the programs can be improved, what is working well and what is not. Rather than prescribe specific evaluation activity now, the ICC should direct the Companies to work with the SAG and evaluation contractor(s) (as ComEd and Ameren have effectively done over the past three years) to develop a thoughtful and reasoned EM&V planning process that considers trade-offs and resource limitations, and that makes the most of the limited funds available. In concert with the evaluation contractors, the Companies and the SAG should explore these trade-offs and work together to develop EM&V high-level plans. This was done as part of the SAG with the electric utilities' first three-year evaluation plan and should be continued on the gas side.

Mr. Mosenthal noted, too, that there may well be instances where joint statewide evaluations make sense. Specifically, for programs delivered jointly with ComEd, the Companies and ComEd should strive to implement joint evaluations. PGL/NS have indicated their plans to pursue joint evaluations with ComEd and I support that decision.[28] There may also be gas efficiency programs similar enough between PGL/NS, Nicor, and Ameren to justify some joint evaluations. Joint evaluations should be pursued where they offer economies of scale and can provide consistent methodologies and provide results to compare across territories.

The People urge the ICC to direct that the Companies, in collaboration with the SAG, develop evaluation plans that strive to maximize benefits by combining evaluation efforts wherever possible and appropriate across any combinations of gas and electric utility jurisdictions where programs are similar or jointly offered.

---

[28] NS-PGL Ex. at 9 (Marks).

IV. Program Issues

A. The Role of the Stakeholder Advisory Group

The Stakeholder Advisory Group ("SAG") was first established by the Commission in ICC Docket Nos. 07-0539 and 07-0540, Ameren and ComEd's petitions for approval of electric energy efficiency plans. The SAG consists of various stakeholders, including Commonwealth Edison Company and the Ameren Illinois Utilities, who have met since 2008 to work with the utilities to reach consensus on issues such as program design and evaluation metrics. In its Orders in ICC Docket Nos. 07-0539 and 07-0540, the Commission stated:

> All parties involved, with the possible exception of Staff, maintain that a Stakeholder Advisory Committee is essential to the success of the Plan. This Commission agrees with ComEd that it should establish a stakeholder process to review ComEd's progress towards achieving the required energy efficiency and demand response goals and to continue strengthening the portfolio. The Stakeholder group's responsibilities include, but are not limited to: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and against statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs where the change is more than 20%.

ICC Docket No. 07-0539, Order at 24; ICC Docket No. 07-0540, Order at 32.

The People believe that utility collaboration with the existing Stakeholder Advisory Group is critical to ensuring the establishment of cost-effective energy efficiency savings programs. The key role the SAG can and has played in developing energy efficiency programs in Illinois has been documented in all of the energy efficiency dockets initiated in 2010. The collaboration needed to establish gross savings values and NTG values is discussed above in Section III of this Brief.

It is worth noting that the Companies' commitment to SAG collaboration seems to be lacking. It clearly opposes any collaboration on the establishment of the key gross savings and

NTG variables that are integral to the calculation of verifiable energy savings. NS-PGL Ex. 3.0 at 19. Mr. Mosenthal testified that in response to a number of AG data requests (AG 2.12, 2.15 & 2.16), the Companies were asked a series of questions about their willingness to engage with the SAG on various issues. The Companies declined to directly answer the questions. Rather, they simply indicated that "No [SAG] presently exists for gas programs, and that the [the Companies did] not know what form such a SAG may take and what role it may play." AG Ex. 1.0 at 45-46. While the Companies state that it would "value the information gained from the dialogue fostered by this group", they aver that "extending decision-making authority to this group, for any aspect of the Plan, is not appropriate and has the potential o impeding timely implementation of the programs and evaluations." NS-PGL Ex. 3.0 at 19. The People could not disagree more. As noted above, and as documented in the electric utility dockets, the SAG collaboration on the electric side has benefited all stakeholders. While the responsibility to achieve the savings and deliver the programs rests with the utility under Section 8-104, ratepayers are providing through a separate rider 100% of the funding these programs, which are specifically designed to reduce both the direct and indirect costs of utility service. 220 ILCS 5/8-104(a). As such, ratepayers have a compelling interest and stake in ensuring program dollars are spent prudently and cost-effectively. In that regard, the creation of the SAG on the electric side was a recognition of this special interest. The ICC should therefore order this collaboration, as it has for the electric utilities in their first three-year plan.

B. Portfolio Flexibility

The Companies have proposed that it be afforded virtually unlimited flexibility to shift budgets between programs, to add or drop measures, and to modify incentives without ICC approval.[29] ComEd, in its Plan in Docket 10-0570, proposed similar flexibility, but it also established criteria by which it would inform the SAG if it intended to significantly modify the plans (similar to the guidance required by the ICC in its prior Order). In its current electric efficiency plan docket, ComEd proposed and the Commission adopted a plan to fully discuss with the SAG prior to initiating the change, any shift in the budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program.[30] Presumably, these modifications would then be discussed and debated among the SAG, and while the utility would ultimately have responsibility for any decisions, SAG members would be free to petition the ICC for reconsideration if they were not able to come to a satisfactory agreement.

The Companies have not specifically proposed conditions on their proposal for program flexibility similar to ComEd. As the entities with responsibility for meeting goals and potentially at risk for penalties, the People support allowing the Companies some flexibility to manage their portfolios and make midcourse corrections as appropriate, as it learns more from evaluations, market conditions, and actual experience with program penetrations, subject to the same conditions as ComEd has proposed. That being said, there is a tension between this flexibility and issues surrounding the deeming of impact values. If all values are deemed for the full three-year plan period, then the Companies may have perverse incentives to modify the portfolios in ways that are not conducive to optimizing true net savings, but rather optimizing their savings claims based on deemed values that may no longer be appropriate. Clearly the option of adding and deleting measures and modifying incentives can have significant impacts on NTG ratios.

AG Ex. 1.0 at 48.

[29] NS-PGL Ex. 1.2 at 41.
[30] ComEd Ex. 2.0 at 61 – 62.

As discussed above, the People oppose the Companies' deeming proposal. However, if the ICC were to approve the Companies' proposal to deem most measure impact factors for a full three-year period, flexibility should be much more limited. Essentially, any deemed value should be dependent on specific program design details. With complete flexibility, the Companies would be free to modify programs in ways that result in program designs and strategies that no longer reflect those for which NTG values were initially deemed. Accordingly, the People support the flexibility the Companies have requested, but only if the ICC adopts Mr. Mosenthal's proposal for establishing gross savings and NTG values. Mr. Mosenthal also recommended that the Commission adopt additional restrictions on the Companies' flexibility proposal in addition to ComEd's list of criteria that would trigger SAG involvement. These additional limitations are:

1. The Companies shall not shift more than 10% of spending between residential and C&I sectors without ICC approval; and

2. The Companies shall not modify their plans such that they no longer meet the statutory requirements for allocations to the low income and state and local government markets.

Id. at 49.

Mr. Mosenthal testified that these criteria are appropriate for reasons of equity. First, unlimited shifting between sectors should be clearly tied to the reconciliation of any riders to guard against cross subsidies between these sectors. While opportunities to ensure that each sector only contributes to programs available to it can be dealt with at the time specific program cost recovery riders are established or reconciled, a relative balance of services and benefits to residential and C&I customers is also a compelling interest that justifies formal pronouncement of criteria by the Commission.

The second criterion ensures equity for low-income and government customers for which the General Assembly indicated a clear intent to allocate at least a minimum portion of the overall portfolio expenditures. 220 ILCS 5/8-104(f)(4). *Id.*

C. Joint Delivery of Programs with ComEd

The Companies' plan to jointly offer certain programs with ComEd while others will be implemented in coordination with ComEd. NS-PGL Ex. 1.2 at 5, 26, 44. Offering joint programs is an appropriate use of ratepayer funds and can help leverage savings across multiple utility services, reduce administrative costs, and provide a higher level of customer service by addressing all their energy needs in a one-stop-shopping fashion. AG Ex. 1.0 at 50. Similarly, coordinated programs, where applicable, also can result in similar positive benefits. But, such joint and cooperative efforts need to be choreographed from the beginning, and each utility needs to clearly understand their respective roles. The Companies' plan, however, appears to lack specificity in many respects.

For example, for some programs, the Companies claim it will "look for joint measures that can benefit both gas and electric use."[31] In other instances, the Companies say it will "coordinate their efforts with ComEd when possible."[32] For still other programs, the Companies claims it "intends" to offer the program "jointly" with ComEd.[33] Despite these assertions, however, Mr. Mosenthal testified that the Companies' responses to AG data requests revealed that they have put little to no planning into the actual implementation of these joint and coordinated programs. NS-PGL's response to AG 2.01(i) states that: "North Shore and Peoples Gas made no assumptions regarding estimated participants for Commonwealth Edison Company

[31] NS-PGL Ex. 1.0 at 9
[32] NS-PGL Ex. 1.0 at 9
[33] NS-PGL Ex. 1.0 at 9

(ComEd) customers."[34] To deliver a joint program — for example the small business direct install program — it is essential that all cost-effective gas and electric measures be available to all participants at the time of service. Therefore, program plans, budgets and goals need to be based on a consistent number of expected participants. The Companies' responses to AG 2.01 and 2.02 makes clear this essential planning has not yet been done. AG Ex. 1.0 at 50.

Moreover, if the Companies were to increase its investment up to the revised spending cap -- meaning budgets and savings goals incorporate all appropriate transportation load and allocate additional funds to joint and cooperatively offered programs -- both electric and gas savings could increase substantially. Currently, ComEd has indicated these programs are "smaller in scope than we would have wanted".[35]

Based on the Companies' plans, the specific commitments and details of joint and coordinated efforts are not clearly provided. The Commission should direct the Companies to revise their plans to commit to these integrated electric-gas program efforts, and ensure their plans correctly match ComEd's plans to efficiently and effectively pursue integrated programs.

More precise information about coordination is needed for other jointly offered programs as well. For example, the Companies state that they intend to offer business custom programs in coordination with ComEd, when possible. The Companies and ComEd will also collaborate in raising awareness of and educating customers on the benefits of energy efficiency.[36] But, the Companies do not offer any specificity as to how it will coordinate or collaborate with ComEd to address their customers' electric and gas savings needs. Peoples Gas and North Shore claim that no assumptions, for example, have been made with respect to the allocation of program costs or

---

[34] AG Ex. 1.0 at 50.
[35] ComEd Ex. 2.0 at 22 (Brandt); ICC Docket No. 10-0570.
[36] NS-PGL Ex 1.2 at 74.

participants.[37] Such a lack of specificity and effort in planning will undermine the effectiveness of the custom program and will result in lost energy efficiency opportunities. Despite the Companies' response that they have not estimated participants, they do provide participation figures and costs in NS-PGL Ex. 1.2, and as shown in the table below. As the table demonstrates, the Companies' estimated participation rates and spending are symptomatic of its lack of effort:

Business Custom	PY 1	PY2	PY3	Cumulative
Peoples Gas	30	70	100	200
North Shore Gas	6	13	19	38
Total Participants	**36**	**83**	**119**	**238**
Total Combined Custom Budget	**$314,549**	**$595,863**	**$773,981**	**$1,684,393**
ComEd Business Custom Participants	**400**	**500**	**600**	**1500**
ComEd Business Custom Budget	**$6,105,332**	**$5,367,038**	**$6,758,643**	**$18,231,013**

AG Ex. 1.0 at 52.

ComEd expects to reach 1,500 custom customers in its service areas, but the Companies expect only 238 (between Peoples and North Shore) of its customers to install custom gas measures. Similarly, ComEd expects to invest more than nine times the amount that the Companies expect to invest in business custom projects. While clearly some of ComEd's customers are also customers of Nicor rather than Peoples Gas' and North Shore's, it appears from the table above that the level of activity PGL/NS is planning would result in many of the custom program participants not actually receiving any gas measures, given the very high penetration of gas usage in ComEd's territory. Mr. Mosenthal testified that he would expect the number of participants and levels of spending to more consistent between ComEd and the Companies. AG Ex. 1.0 at 51-52.

Jointly providing custom programs with ComEd, and aggressively ramping up gas energy savings projects will improve program impacts and customer service. It will also increase the

[37] *See,* AG Ex. 1.0 at 52.

average proportional share of gas savings per custom project. While it is not essential to have a single implementation contractor deliver custom services, it is critical for each utility to assess energy savings opportunities holistically. This means that irrespective of how customers are enrolled into a custom program, the implementers need to perform a whole-building assessment and pursue all cost-effective opportunities within each customer facility. Thus, if a customer is engaged initially through the Companies, it should be their responsibility to manage the project, provide customers with a single point of contact, ensure ComEd's implementation staff are apprised of the electric savings opportunities and vice versa, while providing service to a customer that leverages both gas and electric utilities' offerings. Under the current proposed program design, many energy savings opportunities would be lost because neither the gas nor the electric implementation contractors are expected to fully integrate their services, other than build to customer awareness. *Id.* at 52.

In sum, the Companies have not provided enough detail to fully understand their cooperatively and jointly provided programs to ensure the effective integration of programs. Not only do many of the figures the Companies and ComEd provide seem illogical given supposed joint or cooperative programs, but it seems clear that the commitment to truly integrate efforts has not been made, or at least not been detailed in the planning process. The Commission should reject the Companies' plan for the many reasons discussed above, and also direct the Companies and ComEd to work together to effectively design a single set of integrated programs that truly will be delivered in a seamless fashion to all eligible customers, thereby providing for the implementation of all cost-effective comprehensive gas and electric measures.

D. The Companies' Contract with Franklin Energy Services

As noted in the introduction of this Brief, the Companies have no in-house experience delivering energy efficiency programs, and have contracted with Franklin Energy Services to be their "turnkey" provider of efficiency services. NS-PGL Ex. 1.2 at 26. As such, Franklin and its sub-contractor AEG were hired by the Companies both as its implementer and its planner, and are the chief architects of the Plan. Mr. Mosenthal testified that this dual role is somewhat problematic because it can result in a possible conflict of interest. Essentially, Franklin has an incentive to develop program plans that can help reduce its implementation risk and maximize their profits rather than be focused on long-term societal benefits. Franklin, or its subcontractor AEG, have also developed the assumptions and values the Companies are now asking the Commission to deem, essentially establishing their own performance metrics as well.

As noted by AG witness Mosenthal, it is somewhat problematic and not in the best interests of ensuring the achievement of cost-effective EE programs when perceptions of conflict can occur. Given that the performance metrics have been developed by the implementers themselves, who seek a performance-based contract, this adds additional imperative that the ICC reject deeming and ensure that the best available, independent estimates of actual savings are relied upon for purposes of measuring energy savings.

It is therefore imperative that an open bidding process be a part of any program offered by the utilities. Specifically, it should not be presumed that Franklin (or any other entity) shall be the implementation contractor for the discrete residential and commercial programs. The People are aware that there are many local entities in the Chicago area, the Companies' service territory, that provide efficiency services. Given that these programs are funded with ratepayer dollars, the Commission should order the Companies to engage in an open and fair bidding process, developed in collaboration with the SAG, that provides local entities an opportunity to participate in program delivery. Millions of ratepayer dollars are at stake in the delivery of the Section 8-104 energy efficiency programs. A transparent, open bidding process will help ensure that those ratepayer dollars are well spent.

V. Cost Recovery Mechanism – Rider EOA

The Companies have proposed to recover the costs of their EEP portfolio through a *non-volumetric per customer charge.*[38] Mr. Mosenthal testified that this is inappropriate because:

1. It results in poor levels of equity among and within customer classes;
2. It requires customers to pay for the EEP costs in a way that is dramatically inconsistent with the customers' opportunities for participation in the EEP, opportunities to capture energy and bill savings, and ability to pay;
3. It results in those customers best positioned to capture the largest rebates and other EEP services paying a virtually insignificant share of their gas costs, while those customers likely to benefit least paying relatively exorbitant shares of their gas costs;
4. It is inconsistent with common practice virtually throughout the U.S. for regulated, ratepayer-funded efficiency efforts; and
5. From a policy perspective, it discourages efficiency by minimizing customer costs on the margin and increasing fixed customer charges that can not be avoided.

AG Ex. 1.0 at 18.

In support of the Companies' per customer proposal, PGL/NS Korenchan states that one objective of his proposal is to "provide equity between and within rate classes."[39] This assertion is based on the claim that a per customer charge will:

> Result in increased equity between and within rate classes. Charges for each rate class reflect the costs budgeted for the programs that customers in each rate class are eligible to participate in and benefit from. Costs are spread evenly among customers within the rate class or classes.[40]

[38] *See* NS-PGL Ex. 2.0 at 5-14, NS-PGL Ex. 2.1, and NS-PGL Ex. 2.2.
[39] NS-PGL Ex. 2.0 at 8.
[40] NS-PGL Ex. 2.0 at 9.

When considering the distinction between customer classes, this statement is true. In other words, only charging residential customers for the costs associated with programs available to them will provide some level of equity between residential versus C&I classes. However, preventing cross-subsidization in the allocation of ratepayer funding by customer class is standard procedure in most jurisdictions, and should occur regardless of whether these charges are per customer or volumetric. AG Ex. 1.0 at 19. For example, the electric EEP funds are recovered on a volumetric basis but still ensure equity between customer classes. All other Illinois utilities subject to the energy efficiency requirements of Sections 8-103 and 8-104 utilize a per therm or per kilowatt charge when recovery program costs.

When considering the C&I customer class, however, there is very large variation in both customer size and gas usage. The Companies' C&I programs, for the most part, do not distinguish by customer size.[41] Therefore, Mr. Korenchan's assertion that Petitioners' proposal that "Charges for each rate class reflect the costs budgeted for the programs that customers in each rate class are eligible to participate in and benefit from" does not apply at all. On the contrary, a small mom-and-pop business or small office or retail establishment could end up paying a substantial portion of its total bill toward EEP charges — much more than the 2% cap — while a very large industrial customer would pay just a fraction of a percent of its bill. In fact, the Companies' proposal actually appears to charge the largest customers (service class Nos. 4,5,7 and 8) *only about half as much as smaller customers* (service class No. 2).[42] Presumably, this is based on the Companies excluding most of the commodity costs of these very large customers in its revenue calculations. This creates a very inequitable system. *Id.* at 19-20.

---

[41] The small business direct install program is limited to smaller customers, however, other programs are available to all C&I customers not choosing to be SDC customers under subsection (m) of the Act.

[42] For Peoples Gas, SC Nos. 4,5,7 and 8 would pay $2.34/month, while SC No. 2 would pay $4.48/month. For North Shore, the respective values are $2.48/month and $4.33/month. NS-PGL Ex. 2.0 at 14.

The way to ensure equity across all customers is with a volumetric charge. This is because opportunities for efficiency savings are generally highly proportional to actual gas usage. The more gas one uses, the more efficiency opportunities they generally have, and the larger the customer's ability to capture larger rebates and other services from the EEP portfolio. Therefore, a volumetric charge correctly charges customers in relative proportion to their opportunities to benefit from the EEP they are funding. *Id.* at 20-21.

In addition, a volumetric charge allows for a consistent per therm charge for everyone within a customer class. This means the percentage surcharges would be the same, imposing a consistent burden on everybody in proportion to the gas they are using, in a fundamentally fair way. Since the Act is clear the General Assembly was concerned about the overall *percentage* rate impact by limiting it to 2%,[43] a volumetric charge is consistent with that desire. Under the Companies' approach, a small Peoples Gas S.C. No. 2 customer using 1,000 therms per year at an average cost of $0.65 per therm would have a charge of 8.3% of total costs, while a large industrial customer on S.C. No. 4, 5, 7 or 8, using 4 million therms per year at the same average cost, would only pay a charge of 0.0011% of total costs, or proportionally over *seven thousand times less*. This clearly creates an inequitable situation. *Id.* at 21.

In addition, Mr. Mosenthal testified that in his 27 years' experience in the U.S. regulated utility energy efficiency field, he came across only a single jurisdiction where this approach was used, and this was not related to any utility programs. The exception was a small state energy efficiency fund established by the Ohio state energy office, outside of utility regulatory jurisdiction. *Id.*

For all of these reasons, a volumetric surcharge should be adopted by the Commission.

---

[43] 220 ILCS 5/8-104 (d)

In its Order, too, the Commission should clarify that only prudent and reasonable program costs will be recovered through the rider.

VI. DCEO Plan

The Companies and DCEO have a disagreement about the appropriate budgets over the three years of the plan. The Companies have proposed a ramp up of EE spending that closely follows the statutory goals in each year. As a result, providing DCEO funds based strictly on its share of 25% of total cumulative spending results in the transfer of approximately $9.8 million to DCEO for its proposed programs. AG Ex. 1.0 at 54. DCEO's budgetary ramp up per year — based on strictly following the Companies' proposed budgets — is highlighted in the following table:

DCEO budget from:	PY 1	PY2	PY3	Cumulative
Peoples Gas	$ 1,905,640	$ 2,747,703	$ 3,598,060	$ 8,251,403
North Shore Gas	$ 333,404	$ 574,176	$ 689,238	$ 1,596,818
Total	**$ 2,239,044**	**$ 3,321,879**	**$ 4,287,298**	**$ 9,848,221**

Id.

DCEO is proposing a levelized budget of the three-year period, rather than a ramp up in funding, as proposed by the Companies. This would result in a higher than 25% allocation in the first year of the plan cycle, but less than 25% in the last year. DCEO proposes a levelized budgetary allotment because it claims, according to the Companies, that it believes it can achieve greater savings in PY1, effectively achieving roughly PY2 goals in each year of the plan.[44] The Companies are concerned about DCEO's proposal because it would require Peoples Gas and North Shore to provide DCEO with more funding in year one than they would be collecting from ratepayers.

[44] NS-PGL Ex. 1.0 at 7.

In addition, NS-PGL witness Marks indicates that DCEO does not believe 25% of the overall budget will be sufficient to meet is target of 20% of portfolio savings.[45] DCEO's underachievement is primarily due to the perceived higher cost of saved energy in the low income market sector. The Companies assert that it is too early in the process to determine if DCEO funding is insufficient to achieve its goals.[46]

While the Companies' plans of a more gradual ramp up — consistent with the annual statutory goals — are appropriate for PGL/NS to provide the time needed to build capability, start new programs, and ramp up over time to better position it for achievement of PY4 savings goals, Mr. Mosenthal testified that he did not believe it would be appropriate for the Companies to deny DCEO the necessary funding to fully support projects in which customers are ready and willing to install measures. *Id.* at 55. He suggested that the Commission allow the 25% of budget rule to be managed on a cumulative three-year basis, and not specifically mandate that DCEO spending must equal 25% in each program year. Mandating that spending match these targets each year creates an unnecessary and potentially burdensome system where controlling whether projects close in December or January could have major impacts on DCEO program delivery – impacts that at least financially would be out of DCEO's control. *Id.*

Presumably, the Companies, DCEO and the ICC can establish an appropriate cost recovery mechanism level to support the planned expenditures of both the Companies and DCEO for each year, avoiding any need for Peoples Gas and North Shore to front substantial funds to DCEO that they have not yet collected. In the event DCEO is unable to spend all the funds provided in a given year, such funds can always

[45] NS-PGL Ex. 1.0 at 7.
[46] NS-PGL Ex. 1.0 at 7 (Marks).

be carried over to the following year within the three-year time frame. This approach ensures DCEO won't need to walk away from potential cost-effective savings opportunities, while at the same time smoothing out the rate impacts to customers by somewhat leveling the three years' worth of contributions. *Id.*

As to the issue of whether DCEO can achieve 20% of the savings with 25% of the overall funds, Mr. Mosenthal concurred with the Companies that there is sufficient time to monitor DCEO progress (especially since it believes it can overachieve in the first year) to reconsider this issue after DCEO has had more experience with the gas portfolio.

VII. Conclusion

Wherefore, for all of the reasons stated above, the People of the State of Illinois respectfully request that the Commission enter an Order consistent with the recommendations made in this Brief.

Respectfully submitted.

LISA MADIGAN,
Attorney General of the State of Illinois

By:____________________
Karen L. Lusson
Senior Assistant Attorney General

Karen L. Lusson,
Senior Assistant Attorney General
Public Utilities Division
Illinois Attorney General's Office
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Telephone: (312) 814-1136

E-mail: klusson@atg.state.il.us

Dated: January 6, 2010